IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jorawarmal v. Revenue Appellate Auhority & Ors.

S.B.CIVIL WRIT PETITION NO.1/1987
under Article 226 of the Constitution of India.

Date of Order : 17th May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. Manish Shishodia, for the respondents.

BY THE COURT :

The Municipal Board, Nagaur while exercising powers under Section 203 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as “the Act of 1959”) by an order dated 29.3.1985 ordered and directed the respondents No.3 to 5 for removal of all encroachments said to be made by them on the land in dispute. The aforesaid respondents being aggrieved by order dated 29.3.1985 preferred a revision petition

under Section 300 of the Act of 1959 before the Revenue Appellate Authority, Jodhpur. In revision petition the petitioner was also impleaded as a party respondent as the order under Section 203 of the Act of 1959 was passed by the Municipal Board, Nagaur on basis of an application preferred by the petitioner along with certain other persons. The revision petition preferred by the respondents No.3 to 5 was accepted by the Revenue Appellate Authority by judgment dated 15.11.1985. The Revenue Appellate Authority by order dated 15.11.1985 held that the land in dispute is a “patta-sud” land of the non-petitioners and, therefore, the order passed by the Municipal Board, Nagaur was quashed. After disposal of revision petition by order dated 15.11.1985 the petitioner submitted an application before the Revenue Appellate Authority demanding rehearing of the revision petition on the count that the order dated 15.11.1985 was passed without giving an opportunity of hearing to him. The Revenue Appellate Authority, Jodhpur by its order dated 2.5.1986 accepted the application preferred by the petitioner and made an order to the effect that the order dated 15.11.1985 shall remain inoperative qua the petitioner.

Being aggrieved by order dated 2.5.1986 and 15.11.1985 present writ petition is preferred by the petitioner.

The contention of the counsel for the petitioner is that the order dated 15.11.1985 was passed by the Revenue Appellate Authority without affording him an opportunity of hearing though he was party to the proceedings. The Revenue Appellate Authority also accepted this position by the order dated 2.5.1986 but the Revenue Appellate Authority instead of recalling the order dated 15.11.1985 ordered that the order dated 15.11.1985 shall remain inoperative qua him. Meaning thereby the effect of the order dated 15.11.1985 to the extent deciding the title of the respondents No.3 to 5 over the land in dispute was kept intact. It is submitted by the counsel for the petitioner that the order dated 2.5.1986 is meaningless as the order dated 15.11.1985 wherein the Revenue Appellate Authority held that the land in dispute is “pattasud” land of the respondents No.3 to 5 will remain in operation.

On the other hand, counsel for the respondents stated that the order dated 15.11.1985 was passed by the Revenue Appellate Authority after hearing the counsel for the Municipal Board, Nagaur and other persons similarly situated to the petitioner, as such there was no need to quash the order dated 15.11.1985 on the count that no opportunity of hearing was allowed to the petitioner.

I have heard counsel for the parties.

It is the position admitted that the order dated 15.11.1985 was passed by the Revenue Appellate Authority without affording an opportunity of hearing to the petitioner. The Revenue Appellate Authority also accepted this position by order dated 2.5.1986. The Revenue Appellate Authority while accepting the application submitted by the petitioner for rehearing of the case instead of ordering for rehearing of the matter observed that the order dated 15.11.1985 shall remain inoperative qua the petitioner.

I am in total agreement with the counsel for the petitioner that such an observation is of no consequence in present controversy as by order dated 15.11.1985 the Revenue Appellate Authority while accepting the revision petition under Section 300 of the Act of 1959 held that the land in dispute is “patta-sud” land of the respondents No.3 to 5 and the rights accrued in favour of the respondents No.3 to 5 by order dated 15.11.1985 shall remain intact. By keeping the order dated 15.11.1985 inoperative qua the petitioner the effect of the order dated 15.11.1985 remained unchanged. The Revenue Appellate Authority, the author of the order dated 15.11.1985, failed to recognize the effect of the order dated 15.11.1985. Once the Revenue Appellate Authority reached at the

conclusion that the revision petition was decided without affording an opportunity of hearing to the petitioner then the only course open for him to rehear the matter afresh.

I am not at all impressed with the contention made by the counsel for the respondents No.3 to 5 that the order dated 15.11.1985 was passed after hearing counsel for the Municipal Board, Nagaur and the counsel for the persons similarly situated to the petitioner. The petitioner was a party to the proceedings and, therefore, he was having right to defend his cause and to address the Court.

In view of whatever discussed above this writ petition deserves acceptance, therefore, the same is hereby allowed. The orders impugned dated 15.11.1985 and 2.5.1986 passed by Revenue Appellate Authority, Jodhpur are hereby quashed and set aside. The authority competent to decide revision petition under Section 300 of the Act of 1959 is directed to decide the revision petition afresh in accordance with law. The parties are directed to maintain status quo as existing today till disposal of the revision petition. The authority competent to decide the revision petition under Section 300 of the Act of 1959 is directed to decide the revision petition within a period of six months from today. The petitioner and the respondents No.3 to 5 are also directed to remain

present before the authority competent on 20.6.2005. On that day the authority shall fix the revision petition on a specific date for hearing.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.